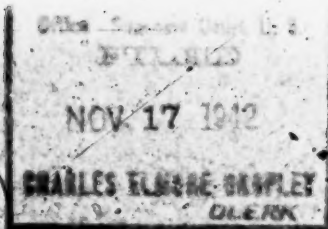




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No. 80

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1942**

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**THE CHOCTAW NATION OF INDIANS, PETITIONER**

**THE UNITED STATES AND THE CHICKASAW NATION  
OF INDIANS**

---

**ON WRIT OF HABEAS CORPUS TO THE COURT OF CLAIMS**

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**BRIEF FOR THE UNITED STATES**

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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1942**

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**No. 80**

**THE CHOCTAW NATION OF INDIANS, PETITIONER**

**v.**

**THE UNITED STATES AND THE CHICKASAW NATION  
OF INDIANS**

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**ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS**

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**BRIEF FOR THE UNITED STATES**

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**OPINION BELOW**

The opinion of the Court of Claims (R. 20-28) is reported in 95 C. Cls. 192.

## **JURISDICTION**

The judgment of the Court of Claims was entered on December 1, 1941 (R. 28). A motion for a new trial filed by petitioner on January 19, 1942, was denied February 2, 1942 (R. 28). The petition for a writ of certiorari was filed April 23, 1942, and granted October 12, 1942. Jurisdiction

of this Court is invoked under Section 4 of the Act of June 7, 1924, 43 Stat. 537, and Section 3 (b) of the Act of February 13, 1925, 43 Stat. 939, as amended by the Act of May 22, 1939, 53 Stat. 752 (28 U. S. C. 288 (b)).

#### QUESTIONS PRESENTED

1. Whether the Chickasaw Nation is entitled to compensation for a one-fourth interest in the common lands of the Choctaws and Chickasaws allotted to Choctaw freedmen, who had been adopted as members of the Choctaw Nation in 1883.

2. Whether, if the Chickasaw Nation is entitled to compensation, payment is to be made by the Choctaw Nation or by the United States.

3. Whether the Court of Claims had jurisdiction to enter an affirmative judgment against the Choctaw Nation.

#### TREATY AND STATUTES INVOLVED

The relevant provisions of Articles II, III, IV, XI, XV, XXVI, and XLVI of the Choctaw-Chickasaw Treaty of April 28, 1866, 14 Stat. 769, are printed in Appendix A, *infra*, pp. 27-31. An act of the General Council of the Choctaw Nation, approved May 21, 1883, is set out in Appendix B, *infra*, pp. 32-35. The relevant portions of the appropriation Acts relating to the \$300,000 fund provided for in the treaty of 1866 appear in Ap-

pendix C, *infra*, pp. 36-38. Relevant portions of Sections 11, 21, and 29 of the Curtis Act of June 28, 1898, c. 517, 30 Stat. 495, are printed in Appendix D, *infra*, pp. 39-40. Sections 11, 36-40, and 68 of the Supplemental Agreement of March 21, 1902, as approved by the Act of July 1, 1902, c. 1362, 32 Stat. 641, are printed in Appendix E, *infra*, pp. 41-44.

#### STATEMENT

At the time of the Civil War, the Choctaw and Chickasaw Indian Nations, each having a substantial Negro slave population, owned tribal lands in common, their respective interests being three-fourths and one-fourth. The tribes, having taken part in the war on the side of the Confederacy, renewed their allegiance to the United States in 1865. By Treaty of April 28, 1866, 14 Stat. 769, the tribes agreed to free their slaves (Art. II). By Article III of this treaty, the tribes ceded to the United States certain lands known as the "leased district"<sup>1</sup> for a consideration of \$300,000. This fund was to be held in trust until the tribes should give their freed slaves the rights and privileges of citizens of the tribes and forty acres of land, at which time the fund was to be paid to the tribes. Article III further provided that if the tribes did not give such rights to

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<sup>1</sup> This land had been leased to the United States in 1855. See *The Chickasaw Freedmen*, 193 U. S. 115, 116.

their freedmen in two years, the trust for the tribes should cease and the fund should be held for the benefit of freedmen who might remove from the tribal territory, the United States agreeing to remove all who were willing to go. The tribes, also agreed (Art. IV) that so long as the freedmen remained with the tribes they should be entitled to as much land as they might cultivate for their support; when made, the forty-acre allotments provided in Article III were to take the place of this land. The treaty made provision for the allotment in severalty of the tribal lands as well (Arts. XI-XXV), and the right of selection of allotments was extended to "all persons who have become citizens by adoption or intermarriage of either of said nations, or may hereafter become such" (Art. XXVI). Finally, the treaty provided that \$200,000 of the \$300,000 fund should be immediately advanced to the tribes (Art. XLVI).

The Choctaws were paid \$150,000 and the Chickasaws \$50,000, pursuant to Article XLVI of the treaty. Act of July 26, 1866, c. 266, 14 Stat. 255, 259. However, neither of the tribes granted to the freedmen, within the two-year period, the rights specified in Article III, nor did the United States remove any freedmen from the tribal territory (R. 15). In 1866 and 1868 the Chickasaw Nation asked Congress to remove the Chickasaw freedmen, but in 1873 the Chickasaws



adopted their freedmen in conformity with Article III of the 1866 treaty, such adoption being subject to "approval by the proper authority of the United States." Such approval was not given at that time. See *The Chickasaw Freedmen*, 193 U. S. 115, 118-119.

In 1880, the Choctaw Nation in a memorial to Congress requested permission to adopt its freedmen pursuant to the 1866 treaty. The Act of May 17, 1882, c. 163, 22 Stat. 68, 72, 73, appropriated \$10,000 for education of the freedmen and provided that "either of said tribes may \* \* \* adopt and provide for the freedmen in said tribe in accordance with said third article" of the 1866 treaty. The Choctaw Nation thereupon adopted its freedmen pursuant to the treaty and declared that they were entitled to forty acres of land "to be selected and held by them under the same title and upon the same terms as the Choctaws". (R. 15-16.) See Annual Report, Commissioner of Indian Affairs (1881), p. LII, H. Ex. Doc. No. 1, pt. 5, 47th Cong., 1st sess. (1881), pp. 42-43; *id.* (1882), p. LIX, H. Ex. Doc. No. 1, pt. 5, 47th Cong., 2d sess., pp. 47-48 (1883); *id.* (1883), pp. LII-LIII, H. Ex. Doc. No. 1, pt. 5, 48th Cong., 1st sess., p. 42 (1884); *id.* (1884), p. XLV, H. Ex. Doc. No. 1, pt. 5, 48th Cong., 2d sess., pp. 36-37 (1885). By the Act of March 3, 1885, c. 341, 23 Stat. 366, the balance of the Choctaws' share of the \$300,000 fund provided in the 1866 treaty was ap-



propriated as a trust fund for them.<sup>2</sup> In 1876 (or 1877) and again in 1885 the Chickasaws, now unwilling to adopt their freedmen, asked the United States to remove them from Chickasaw territory. Instead, Congress in 1894 purported to approve the Chickasaw action of 1873 adopting its freedmen. See *The Chickasaw Freedmen*, 193 U. S. 115, 120.

In the Curtis Act of 1898, Congress provided for the allotment in severalty of Choctaw and Chickasaw lands. Act of June 28, 1898, c. 517, 30 Stat. 495. The Act provided (sec. 21) that a roll should be made of Choctaw freedmen "entitled to citizenship under the treaties and laws of the Choctaw Nation." A roll was also to be made of Chickasaw freedmen to whom forty acres of land were to be allotted and used "until their rights under said treaty [of 1866] shall be determined in such manner as shall be hereafter provided by Congress." By Section 29 of the Act, the Atoka Agreement of 1897 with the Choctaw and Chickasaw Nations was ratified, with a provision that allotments to Choctaw and Chickasaw freedmen be proportionately deducted from the portions to be allotted to the members of those tribes.

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<sup>2</sup> All except \$17,375 of the Chickasaws' share of the \$300,000 fund was paid to them, \$50,000 being advanced in 1865 and other small amounts being paid later. See Act of July 25, 1866, c. 266, 14 Stat. 255, 259; Act of April 10, 1869, c. 16, 16 Stat. 13, 39; Act of May 17, 1882, c. 163, 22 Stat. 68, 73.

In 1902 the supplementary Atoka Agreement (hereafter called the Supplemental Agreement) became effective. Act of July 1, 1902, c. 1362, 32 Stat. 641. It too provided (sec. 11) that forty acres of land should be allotted to each Choctaw and Chickasaw freedman, but was silent as to the deduction of such allotments from the shares of the tribes. Sections 36-40, under the separate heading "Chickasaw Freedmen", provided for suit in the Court of Claims to determine the rights of Chickasaw freedmen. There was no comparable provision respecting the Choctaw freedmen. Section 40 provided that final allotments should be made to the Chickasaw freedmen pending such determination and that, if the Chickasaw freedmen were not otherwise entitled to allotments, judgment should be entered against the United States for the value of the allotted lands. This section further provided:

That nothing contained in this paragraph shall be construed to affect or change the existing status or rights of the two tribes as between themselves respecting the lands taken for allotment to freedmen, or the money, if any, recovered as compensation therefor, as aforesaid.

The agreement also provided (sec. 68) that—

No act of Congress or treaty provision, nor any provision of the Atoka agreement, in-

consistent with this agreement, shall be in force in said Choctaw and Chickasaw nations.

Suit was brought in the Court of Claims by both tribes pursuant to the Supplemental Agreement, and upon appeal this Court held that the Chickasaws had not adopted their freedmen because, prior to the Congressional approval in 1894 of the Chickasaw legislation of 1873 providing for adoption, the Chickasaws had repealed the adoption. *The Chickasaw Freedmen*, 193 U. S. 115. The value of lands allotted was thereafter determined, and final judgment was entered on January 24, 1910, for \$606,936.08. Prior to entry of this judgment, the Choctaws applied for an additional decree which would deduct from the Choctaws' share one-fourth the value of lands which had been allotted to Choctaw freedmen. No action was ever taken on this application. (R. 19.) The judgment was subsequently paid and the proceeds were distributed to the tribes in the proportion of three-fourths and one-fourth. Act of June 25, 1910, c. 385, 36 Stat. 774, 807-808.

This suit was filed on August 5, 1929, by the Chickasaw Nation against the United States under the jurisdictional Act of June 7, 1924, c. 300, 43 Stat. 537, to recover one-fourth the value of lands allotted to Choctaw freedmen (R. 1-9). By order of December 14, 1939, the Choctaw Nation was impleaded as a defendant by the United

States pursuant to Section 6 of the jurisdictional Act (R. 10-11). The Court of Claims held that the rights of freedmen to lands were not settled by the 1866 treaty and that by the Atoka Agreement and the Supplemental Agreement of 1902 it was agreed that the Choctaw freedmen were to be furnished allotments at the expense of the Choctaws. Judgment was entered against the Choctaws without deciding the liability, if any, of the United States (R. 28).

#### **SPECIFICATION OF ERRORS TO BE URGED**

The Court of Claims erred:

1. In failing to hold that the Choctaw freedmen acquired a right to forty-acre allotments by their adoption pursuant to the Choctaw-Chickasaw Treaty of 1866.

2. In holding that the Chickasaws did not consent to the allotment to Choctaw freedmen out of common lands.

3. In holding that the Supplemental Agreement of 1902 provided that allotments to Choctaw freedmen were to be at the expense of the Choctaws.

4. In entering judgment for the Chickasaw Nation.

#### **SUMMARY OF ARGUMENT**

##### **I**

A. By legislative enactment of its General Council in 1883, the Choctaw Nation adopted its

freedmen as citizens and gave each of them the right to an allotment of forty acres of land pursuant to the treaty of 1866. There were no qualifications upon this adoption which prevented it from complying with the treaty. Nor is it material here that allotments were not in fact made until after 1902, for the right to such allotments was vested in the freedmen in 1883.

B. The Chickasaw Nation, by signing the treaty of 1866, consented to adoption by the Choctaw Nation of its freedmen and to the making of forty-acre allotments to them out of the land commonly owned by the Choctaw and Chickasaw Nations. This agreement did not expire in two years nor did it require concurrent action by both Indian Nations. All three parties to the treaty recognized this fact: the Chickasaws, by taking action in 1873 looking towards adoption of its freedmen and by seeking removal of its freedmen pursuant to the treaty in 1876 (or 1877) and again in 1885; the Choctaws and the United States by the adoption of the Choctaw freedmen in 1883 and by payment of the balance of the Choctaw's share of the \$300,000 fund in 1885. The Chickasaws refused to adopt their freedmen. Nevertheless, all of their share of the \$300,000 fund except \$17,375 was advanced to them. By retaining this payment the Chickasaws recognized the validity of the adoption of the Choctaw freedmen and of the grant to them of rights to forty-acre allotments. The Chickasaw Nation, having thus con-



sented to the adoption and to the grant of allotments to Choctaw freedmen, cannot now recover the value of such allotments.

C. The Supplemental Agreement of 1902, following the Atoka Agreement of 1897 which had been incorporated into the Act of June 28, 1898, provided for the making of allotments to Choctaw freedmen without qualification. The making of allotments to Chickasaw freedmen was qualified by the provisions of Sections 36-40 authorizing suit in the Court of Claims to determine the rights of Chickasaw freedmen, the United States to pay for their allotments if they had no rights. Accordingly, the Supplemental Agreement recognized and gave effect to the rights of Choctaw freedmen acquired by their adoption. The proviso of Section 40, relating only to Chickasaw freedmen, cannot be construed to require the Choctaw Nation to bear the entire expense of allotments to its freedmen.

## II

Allotments were made to Choctaw freedmen pursuant to the Supplemental Agreement and patents were issued by the chiefs of the Choctaw and Chickasaw Nations, the owners of the fee simple. Consequently, such allotment could not constitute a taking by the United States. Nor did the United States ever agree to compensate the Chickasaw Nation for such allotments. If such an obligation was imposed by the Supplemental Agree-



ment, it rests upon the Choctaw Nation. There is, therefore, no basis upon which to rest liability of the United States, even if the Chickasaw Nation is entitled to compensation.

### III

The Choctaw Nation was properly impleaded as a defendant to this suit brought by the Chickasaw Nation under Section 6 of the jurisdictional Act of June 7, 1924. The Act contemplated settlement of all matters in controversy between the United States and the Choctaw and Chickasaw Nations so as to complete the settlement of the affairs of the tribe. To this end, the Court of Claims was authorized to bring in additional parties and enter appropriate judgment. This authorization was made so as to permit the procedure followed in the instant case, namely, settlement in this suit of all rights as to allotments to Choctaw freedmen.

### ARGUMENT

*Introduction.*—Although the United States is designated as a respondent, its liability has not been determined nor has any judgment against it been entered (R. 27-28). However, in holding that the Chickasaw Nation is entitled to compensation for one-fourth the value of allotments made to Choctaw freedmen, the court below rejected the contention made by both the Choctaw Nation and the United States that no

such liability exists. This decision, unless reversed, would seemingly constitute "the law of the case" if it should be later necessary to examine into the Government's liability. Hence, this brief will state the reasons for the position of the Government: first, that the Chickasaw Nation is not entitled to recover the value of such allotments; second, that even if the Chickasaw Nation is entitled to compensation, no liability rests upon the United States; and third, that the Court of Claims had jurisdiction to enter an affirmative judgment against the Choctaw Nation.

# I

## THE CHICKASAW NATION IS NOT ENTITLED TO COMPENSATION FOR LANDS ALLOTTED TO CHOCTAW FREEDMEN

### A. THE CHOCTAW FREEDMEN ACQUIRED A RIGHT TO FORTY-ACRE ALLOTMENTS BY THEIR ADOPTION PURSUANT TO THE 1866 TREATY

The court below held that the rights of the Choctaw freedmen were not settled by the 1866 treaty between the United States, the Choctaws, and the Chickasaws (R. 25),<sup>1</sup> apparently partly on the ground that no lands were permanently allotted until after 1902 (see R. 21).<sup>2</sup> But clearly the fact that allotments were not actually made until later (see Annual Report, Commissioner of Indian Affairs (1906), p. 142, H. Doc. No. 5, 59th

<sup>1</sup> The other ground of the court below was its belief that the history of the controversy disclosed the parties never so interpreted the treaty (R. 25). We feel that this construction is erroneous. The point is discussed at pp. 16-18, *infra*.

Cong., 2d sess., p. 142 (1907)) is immaterial if the right to such allotments was conferred by the treaty, and the adoption in 1883 of the Choctaw freedmen pursuant thereto. This was recognized in the case of *The Chickasaw Freedmen*, 193 U. S. 115, where the Court stated (p. 123): "The main, if not crucial, question is, were the freedmen adopted by the Chickasaw Nation as provided in the treaty?" It was there held that the Chickasaw freedmen never acquired a right to allotments because the conditional adoption by the Chickasaws in 1873 was rescinded before its purported ratification by Congress in 1894. On the other hand, the adoption of the Choctaw freedmen was not repealed. Congress twice recognized its validity: first, by passing the Act of 1882 in response to the Choctaw memorial requesting permission to adopt and, second, by the Act of 1885 transferring to the Choctaws the balance of their share of the \$300,000 fund. (See Statement, *supra*, pp. 5-6.)

The Court of Claims remarked (R. 21) that in the adoption the Choctaws "attached qualifications which may have prevented it from complying with the treaty of 1866." However, the court did not specify to what "qualifications" it referred. And a comparison of the 1883 act of adoption of the Choctaw General Council (Appendix, *infra*, pp. 32-35) with the 1866 treaty (Appendix, *infra*, pp. 27-31) demonstrates that there were no such qualifications. In fact, in *Choctaw and Chickasaw*

*Nations v. United States*, 81 C. Cls. 63, 77, it was conceded that the Choctaw freedmen had been adopted. It is therefore clear that by adoption the Choctaws conferred upon their freedmen a right to receive forty-acre allotments after allotments had been made to the citizens of that tribe.

**B. THE CHICKSAWS CONSENTED TO THE ALLOTMENTS TO CHOCTAW FREEDMEN OUT OF THE COMMON LANDS**

The treaty of 1866 made complete provision for the freedmen of the tribes. By Article IV they were given the right to cultivate land sufficient for their support; subsequent forty-acre allotments were to take the place of this land. The tribes were authorized to adopt the freedmen and give them forty-acre allotments from the commonly owned lands. The freedmen were given the right to remove within ninety days after adoption, in which case they would receive \$100 per capita; and, if no action for adoption was taken in two years, freedmen who removed within ninety days thereafter were to share in the \$300,000 fund proffered by the United States. In this way, the freedmen were either to be paid if they removed or were given land if they remained. Both tribes agreed that such lands should be given to the freedmen out of the lands commonly owned by the two tribes. (Art. III.) And, by Article XXVI, in conjunction with Articles XI-XXV, the tribes agreed to extend the right of selection of allotments to all

persons who might later be adopted into either tribe. Clearly, therefore, the Chickasaws agreed that forty-acre allotments to Choctaw freedmen might be made out of the common lands.

The Choctaw adoption was made in conformity to this treaty, hence in accordance with the previous consent of the Chickasaws. See Appendix, *infra*, pp. 27-35. Nor was this adoption invalid because made more than two years after the date of the treaty. All parties recognized that there was no limitation upon the time of exercise of rights under the treaty. For example, the Chickasaws themselves took action looking toward adoption of their freedmen in 1873, seven years after the date of the treaty. Later, in 1876 (or 1877) and 1885, the Chickasaws sought removal of their freedmen by the United States under an alternative provision of the treaty. And both the Choctaws and Congress in the proceedings for the adoption of the Choctaw freedmen took the position that the treaty provision was still effective. (See Statement, *supra*, pp. 4-6.) Obviously, this construction of the treaty by all three parties to it should prevail, especially in view of the fact that, as stated by the Commissioner of Indian Affairs, at the time of the Choctaw adoption in 1883 "the only objection to this legislation [Act of May 17, 1882; see Statement, *supra*, p. 5] comes from the [Choctaw] freedmen themselves, who ask to be granted all the



privileges accruing to them under these treaty stipulations, but protest against being placed under the jurisdiction of the Choctaw laws." Annual Report, Commissioner of Indian Affairs (1881) p. LIII, H. Ex. Doc. No. 1, pt. 5, 47th Cong. 1st sess. (1881), pp. 42-43.\*

Concurrent action by both tribes was not required. The freedmen had been given either a right to land or to money (Art. III). Obviously, neither tribe was interested in whether the freedmen of the other tribe should be permitted to participate in that other tribe's affairs. The treaty referred throughout to both "Choctaws and Chickasaws" because it was made with both tribes owning the lands in common. Article XXVI thereof providing that the right of selection of allotments (Arts. XI-XXV) given to "Choctaws and Chickasaws, respectively, shall extend to all persons who may have become citizens by adoption or intermarriage of either of said nations, or who may hereafter become such" makes it plain that adoption did not require joint action by both

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\*This report (p. LIII) shows that at that time the Chickasaws' position was solely that they not be forced to adopt their freedmen. Because of its location in Finding 3 (R. 16), the statement that the Chickasaws objected to allotments to Choctaw freedmen out of the common lands would seem to contradict this report. If it is to be so construed, the United States respectfully suggests that the record should be supplemented by bringing the evidence before this Court, and if this is done, that there is no basis for such finding for the period prior to 1897.



tribes. The Chickasaws recognized this when, in 1873, they took action for the purpose of adopting their freedmen without action by the Choctaws. This Court recognized the validity of such unilateral action when it said that this Chickasaw adoption "responded, in the main, to the treaty of 1866, and if it had force in 1894, when it was approved by Congress, the adoption of the freedmen was made complete." *The Chickasaw Freedmen*, 193 U. S. 115, 124. Similarly, the Chickasaws in 1876 (or 1877) and 1885 asked Congress to remove the Chickasaw freedmen pursuant to the treaty without action of the Choctaw tribe or reference to the Choctaw freedmen. Thus, the Chickasaws understood the treaty in its natural meaning to permit either tribe to take action as to its freedmen without concurrent action by the other.<sup>3</sup>

Moreover, both the Chickasaws and the Choctaws have been fully compensated for the allotments made to the freedmen. Pursuant to Sections 36-40 of the Supplemental Agreement of 1902 and this Court's decision in the case of *The Chickasaw Freedmen*, 193 U. S. 115, the United

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<sup>3</sup> The reason for the refusal of the Chickasaws to adopt their freedmen is to be explained by the fact that there were about 6,300 Chickasaws and some 4,600 Chickasaw freedmen (*Choctaw Nation v. United States*, 83 C. Cls. 140, 146; H. Doc. 920, 61st Cong. 2d sess. (1910)). The Choctaw tribe numbered 20,799 while its freedmen totalled only 5,973 (R. 20; *Choctaw Nation v. United States*, 83 C. Cls. 140, 144).

States paid both tribes in full for the allotments to the Chickasaw freedmen. By the treaty of 1866 the United States agreed to pay the tribes \$300,000 for forty-acre allotments to be made to both Choctaw and Chickasaw freedmen from the commonly owned lands. The Choctaw Nation gave its freedmen the right to such allotments and received its share of the \$300,000. The Chickasaw Nation did not adopt its freedmen. Nevertheless, it has received and retained all of its one-fourth of the \$300,000 fund except \$17,375.\* (See Statement, *supra*, pp. 5-6.) Plainly the Chickasaws have received thereby more than their share of the amount due for the allotments to Choctaw freedmen and, by retention of such payment, have recognized the right of Choctaw freedmen to allotments from the common lands.

To summarize: By signing the 1866 treaty the Chickasaws agreed that forty-acre allotments should be made to freedmen out of the commonly owned lands if they were adopted. The Choctaw freedmen were adopted pursuant to the treaty. All parties agreed and this Court recognized that neither lapse of time nor the fact that such action

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\* In an action filed in the Court of Claims on September 27, 1928, the Choctaws and Chickasaws demanded payment of the unpaid balance of the \$300,000 fund created by Article III of the 1866 Treaty. This suit was dismissed on October 9, 1933, on motion of plaintiffs because "their position in this case might be inconsistent with the contentions urged by plaintiffs in other cases." (Ct. Cls. No. J-619, Sen. Doc. 104, 73d Cong., 2d sess., p. 11.)

was taken by only one tribe prevented the adoption from conforming to the treaty. The treaty, in effect, provided for the purchase of allotments for the freedmen with the \$300,000 fund. It follows that the Chickasaws, having previously consented in the 1866 treaty to the allotments from the commonly owned lands and having been more than paid therefor, cannot now recover their share of the value of such allotments.

**C. THE ATOKA AGREEMENT AS SUPPLEMENTED BY THE AGREEMENT OF 1902 CONFIRMED THE RIGHT OF CHOCTAW FREEDMEN TO ALLOTMENTS FROM THE COMMONLY OWNED LANDS**

The Atoka Agreement, as approved by Congress in Section 29 of the Act of June 28, 1898, c. 517, 30 Stat. 495, provided for allotment of forty-acre tracts to both Choctaw and Chickasaw freedmen, the amounts of these allotments to be deducted from the allotments to the members of the respective tribes. However, as to Chickasaw Freedmen, the Dawes Commission was directed to make allotments to be used until their rights under the 1866 treaty were determined (sec. 21).

These provisions were completely changed by the Supplemental Agreement of 1902, which is controlling.<sup>7</sup> It provided that forty-acre allotments should be made to each Choctaw and Chick-

<sup>7</sup> Section 68 of the Supplemental Agreement, 32 Stat. 641, 256, provides "No Act of Congress or treaty provision, nor any provision of the Atoka agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw nations."

asaw freedman (sec. 11, 32 Stat. 641, 642). There was no requirement that allotments to Choctaw freedmen be deducted from allotments to Choctaw members, nor was any other condition attached to the allotments. Under the sub-heading "Chickasaw Freedmen," Sections 36-40 provided for suit in the Court of Claims to determine whether the Chickasaw freedmen had previously acquired a right to allotments, the United States to pay their value if the freedmen had not acquired such rights. In this manner, the Choctaw freedmen were given allotments without qualification while the disputed question as to Chickasaw freedmen was submitted to the Court of Claims. Only one conclusion can be drawn from this action. The parties believed that the Choctaw freedmen were plainly entitled to allotments because of their adoption to which the Chickasaws had consented in 1866, while doubt existed whether the Chickasaws had adopted their freedmen.

The Court of Claims seized upon the concluding phrase of Section 40 to justify its conclusion that allotments to Choctaw freedmen were to be at the expense of the Choctaws (R. 26-27). That phrase is as follows:

- *Provided*, That nothing contained in this paragraph shall be construed to affect or change the existing status or rights of the two tribes as between themselves respecting the lands taken for allotment to freedmen,

or the money, if any, recovered as compensation therefor, as aforesaid.

The "paragraph" referred to is obviously Sections 36-40 under the sub-heading "Chickasaw Freedmen." The reference to "lands taken for allotment to freedmen, or the money \* \* \* recovered as compensation *therefor*" could only mean Chickasaw freedmen since no provision was made for money recovery as to Choctaw allotments to freedmen. Even if by rewriting the proviso it should be held to include allotments to Choctaw freedmen, it does not grant to the Chickasaws a right to recover for the allotments to which they consented by signing the 1866 treaty. The Supplemental Agreement makes specific provision for settlement of the question as to adoption by the Chickasaws of their freedmen. There can be no doubt that had there been any question as to the validity or effect of the Choctaw adoption similar specific provision for its settlement would have been made.

## II

**EVEN IF THE CHICKASAW NATION IS ENTITLED TO COMPENSATION, LIABILITY RESTS UPON THE CHOCTAW NATION, NOT THE UNITED STATES**

The lands in question were owned jointly by the Choctaw and Chickasaw Nations. Patents for the lands allotted were executed by the principal chiefs of the two nations (see Section 29 of the Act of June 28, 1898, c. 517, 30 Stat. 505; Annual



Report, Commissioner of Indian Affairs (1906), p. 142, H. Doc. No. 5, 59th Cong., 2d sess. (1907)). Obviously, the allotment of said lands to freedmen pursuant to the Supplemental Agreement of 1902 could not constitute a taking of those lands by the United States. Nor did the United States ever agree to compensate the Chickasaws for their interest in lands allotted to Choctaw freedmen, as it did in the case of the allotments to Chickasaw freedmen. Any arrangement that the Choctaws should bear the complete expense of the allotments must have been, as the court below held (R. 27), "an obligation of the Choctaw Nation." In fact, as shown above (pp. 18-19), the United States has already paid both Nations for the allotments made to freedmen. It follows that there is no basis upon which to rest liability of the United States. Cf. *United States v. Algoma Lumber Co.*, 305 U. S. 415, 420-442; *Choctaw and Chickasaw Nations v. United States*, 81 C. Cls. 63, 77-78. And, of course, any liability which might arise because of the application made by the Choctaw Nation prior to the entry of the judgment in the *Chickasaw Freedmen* case (193 U. S. 115; see R. 19) cannot be imposed upon the United States.

### III

THE COURT OF CLAIMS HAD JURISDICTION TO ENTER AN AFFIRMATIVE JUDGMENT AGAINST THE CHOCTAW NATION

The Choctaw Nation asserts that the Court of Claims was not authorized to enter judgment



against the Choctaw Nation. As the United States is under no liability to the Chickasaw Nation (see *supra*, pp. 22-23) it has no pecuniary interest in settlement of this question. However, other suits are pending concerning claims of the Choctaws and Chickasaws and it is of importance to the Government to know whether it may implead those tribes. The jurisdictional Act of June 7, 1924, c. 300, 43 Stat. 537, permitting suits by the Choctaw or Chickasaw Nations provides (sec. 6):

The Court of Claims shall have full authority by proper orders and process to bring in and make parties to such suit any or all persons deemed by it necessary or proper to the final determination of the matters in controversy.

The Choctaw Nation insists that the only "matter in controversy" was the claim of the Chickasaw Nation against the United States for lands allotted to Choctaw freedmen (Reply to Memorandum of the United States, p. 3). It seems plain, however, that the "matter in controversy" is the general question of liability with respect to allotments to Choctaw freedmen. The jurisdictional Act embraced (sec. 1) "all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Choctaw and Chickasaw Indian Nations or Tribes, or either of them, or arising under or growing out of any Act of Congress in relation to Indian affairs which said Choctaw and Chickasaw

Nations or Tribes may have against the United States. \* \* \*

The Choctaw and Chickasaw Tribes owned their lands in common. Accordingly, it is evident that claims against the United States under treaties or agreements with them would frequently, if not inevitably, involve both tribes. Section 6 furnishes a means whereby the Nation which was not a party might be joined and the entire controversy settled in one proceeding. Such was the procedure followed not only in the instant case, but also in *Choctaw Nation v. United States*, 83 C. Cls. 140, certiorari denied, 300 U. S. 668, where the United States impleaded the Chickasaw Nation. The jurisdictional Act was passed to complete the settlement of the affairs of the tribes. See H. Rep. No. 295, 68th Cong. 1st sess. (1924); S. Rep. No. 440, 68th Cong. 1st sess. (1924). In many instances this could only be accomplished by the presence in court of both Nations. For this purpose Section 6 provided for the joinder of "any or all persons" necessary to a final determination. The Act having contemplated joinder of any party interested, the fact that an Indian tribe may not be sued without the consent of the United States is immaterial. It is evident therefore that the Court of Claims properly joined the Choctaw Nation as a defendant in the instant case and had jurisdiction to enter any appropriate judgment to conclude the litigation.

## CONCLUSION

It is respectfully submitted that the judgment of the Court of Claims should be reversed with directions to dismiss the petition.

✓ CHARLES FAHY,

*Solicitor General.*

✓ NORMAN M. LITTELL,

*Assistant Attorney General.*

✓ ROBERT E. MULRONEY,

✓ VERNON L. WILKINSON,

✓ ROGER P. MARQUIS,

WALTER J. CUMMINGS, Jr.,

*Attorneys.*

NOVEMBER 1942.

## APPENDIX A

The material portions of the Choctaw-Chickasaw Treaty of April 28, 1866, 14 Stat. 769, are as follows:

**ARTICLE II.** The Choctaws and Chickasaws hereby covenant and agree that henceforth neither slavery nor involuntary servitude, otherwise than in punishment of crime whereof the parties shall have been duly convicted, in accordance with laws applicable to all members of the particular nation, shall ever exist in said nations.

**ARTICLE III.** The Choctaws and Chickasaws, in consideration of the sum of three hundred thousand dollars, hereby cede to the United States the territory west of the 98° west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than five per cent, in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations respectively shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by, or belonging to, said

nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately on the enactment of such laws, rules, and regulations, the said sum of three hundred thousand dollars shall be paid to the said Choctaw and Chickasaw nations in the proportion of three fourths to the former and one fourth to the latter,—less such sum, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent, before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively, within two years from the ratification of this treaty, then the said sum of three hundred thousand dollars shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said territory in such manner as the United States shall deem proper,—the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefit of said sum



of three hundred thousand dollars, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

**ARTICLE IV.** The said nations further agree that all negroes, not otherwise disqualified or disabled, shall be competent witnesses in all civil and criminal suits and proceedings in the Choctaw and Chickasaw courts, any law to the contrary notwithstanding; and they fully recognize the right of the freedmen to a fair remuneration on reasonable and equitable contracts for their labor, which the law should aid them to enforce. And they agree, on the part of their respective nations, that all laws shall be equal in their operation upon Choctaws, Chickasaws, and negroes, and that no distinction affecting the latter shall at any time be made, and that they shall be treated with kindness and be protected against injury; and they further agree, that while the said freedmen, now in the Choctaw and Chickasaw nations, remain in said nations, respectively, they shall be entitled to as much land as they may cultivate for the support of themselves and families, in cases where they do not support themselves and families by hiring, not interfering with existing improvements without the consent of the occupant, it being understood that in the event of the making of the laws, rules, and regulations aforesaid, the forty acres aforesaid shall stand in place of the land cultivated as last aforesaid.

**ARTICLE XI.** Whereas the land occupied by the Choctaw and Chickasaw nations, and described in the treaty between the United States and said nations, of June twenty-second, eighteen hundred and fifty-five, is

now held by the members of said nations in common, under the provisions of the said treaty; and whereas it is believed that the holding of said land in severalty will promote the general civilization of said nations, and tend to advance their permanent welfare and the best interests of their individual members, it is hereby agreed that, should the Choctaw and Chickasaw people, through their respective legislative councils, agree to the survey and dividing their land on the system of the United States, the land aforesaid east of the ninety-eighth degree of west longitude shall be, in view of the arrangements hereinafter mentioned, surveyed and laid off in ranges, townships, sections, and parts of sections \* \* \*

ARTICLE XV. At the expiration of the ninety days' notice aforesaid, the selection which is to change the tenure of the land in the Choctaw and Chickasaw nations from a holding in common to a holding in severalty shall take place, when every Choctaw and Chickasaw shall have the right to one quarter-section of land, whether male or female, adult, or minor \* \* \*

ARTICLE XXVI. The right here given to Choctaws and Chickasaws, respectively, shall extend to all persons who have become citizens by adoption or intermarriage of either of said nations, or who may hereafter become such.

ARTICLE XLVI. Of the moneys stipulated to be paid to the Choctaws and Chickasaws under this treaty for the cession of the leased district, and the admission of the Kansas Indians among them, the sum of one hundred and fifty thousand dollars shall be advanced and paid to the Choctaws, and fifty thousand dollars to the

Chickasaws, through their respective treasurers, as soon as practicable after the ratification of this treaty, to be repaid out of said moneys or any other moneys of said nations in the hands of the United States; the residue, not affected by any provision of this treaty, to remain in the Treasury of the United States at an annual interest of not less than five per cent, no part of which shall be paid out as annuity, but shall be annually paid to the treasurer of said nations, respectively, to be regularly and judiciously applied, under the direction of their respective legislative councils, to the support of their government, the purposes of education, and such other objects as may be best calculated to promote and advance the welfare and happiness of said nations and their people respectively.

## APPENDIX B

The act of the General Council of the Choctaw Nation, approved May 21, 1883, is as follows:

**AN ACT entitled "An act to adopt the freedmen of the Choctaw Nation"**

Whereas by the third and fourth articles of the treaty between the United States and the Choctaw and Chickasaw Nations, concluded April 28, 1866, provision was made for the adoption of laws, rules, and regulations necessary to give all persons of African descent resident in said nations at the date of the treaty of Fort Smith, September 13, 1865, and their descendants, formerly held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except in the annuities, moneys, and public domain claimed by or belonging to said nations respectively; and also to give to such persons who were residents as aforesaid, and their descendants, 40 acres each of the lands of said nations on the same terms as Choctaws and Chickasaws, to be selected on the survey of said lands; until which said freedmen shall be entitled to as much land as they may cultivate for the support of themselves and families; and

Whereas the Choctaw Nation adopted legislation in the form of a memorial to the United States Government in regard to

adopting freedmen to be citizens of the Choctaw Nation, which was approved by the principal chief November 2, 1880, setting forth the status of said freedmen and the inability of the Choctaw Nation to prevail upon the Chickasaws to adopt any joint plan for adopting said freedmen, and notifying the United States Government of their willingness to accept said freedmen as citizens of the Choctaw Nation in accordance with the third and fourth articles of the treaty of 1866 as a basis; and—

Whereas a resolution was passed and approved November 5, 1880, authorizing the principal chief to submit the aforesaid proposition of the Choctaw Nation to adopt their freedmen to the United States Government; and—

Whereas a resolution was passed and approved November 6, 1880, to provide for the registration of freedmen in the Choctaw Nation, authorizing the principal chief to appoint three competent persons in each district, citizens of the nation, whose duty it shall be to register all freedmen referred to in said third article of the treaty of 1866 who desire to become citizens of the nation in accordance with said treaty, and upon proper notification that the Government of the United States had acted favorably upon the proposition to adopt the freedmen as citizens, to issue his proclamation notifying all such freedmen as desire to become citizens of the Choctaw Nation to appear before said commissioner for identification and registration; and—

Whereas in the Indian appropriation act of Congress May 17, 1882, it is provided that either of said tribes may adopt and provide for the freedmen in said tribe in



accordance with said third article: Now, therefore,

*Be it enacted by the general council of the Choctaw Nation*, That all persons of African descent resident in the Choctaw Nation at the date of the treaty of Fort Smith, September 13, 1865, and their descendants, formerly held in slavery by the Choctaws or Chickasaws, are hereby declared to be entitled to and invested with all the rights, privileges, and immunities, including the right of suffrage, of citizens of the Choctaw Nation, except in the annuities, moneys and the public domain of the nation.

SEC. 2. *Be it further enacted*, That all said persons of African descent, as aforesaid, and their descendants, shall be allowed the same rights of process, civil and criminal, in the several courts of this nation as are allowed to Choctaws, and free protection of persons and property is hereby granted to all such persons.

SEC. 3. *Be it further enacted*, That all said persons are hereby declared to be entitled to forty acres each of the lands of the nation, to be selected and held by them under the same title and upon the same terms as the Choctaws.

SEC. 4. *Be it further enacted*, That all said persons aforesaid are hereby declared to be entitled to equal educational privileges and facilities with the Choctaws so far as neighborhood schools are concerned.

SEC. 5. *Be it further enacted*, That all said persons as shall elect to remove and do actually and permanently remove from the nation are hereby declared to be entitled to one hundred dollars per capita, as provided in said third article of the treaty of 1866.

SEC. 6. *Be it further enacted*, That all said persons who shall decline to become citizens of the Choctaw Nation, and who do not elect to remove permanently from the nation, are hereby declared to be intruders, on the same footing as other citizens of the United States resident herein; and subject to removal for similar causes.

SEC. 7. *Be it further enacted*, That intermarriage with such freedmen of African descent who were formerly held as slaves of the Choctaws, and have become citizens, shall not confer any rights of citizens in this nation, and all freedmen who have married or who may hereafter marry freedwomen who have become citizens of the Choctaw Nation are subject to the permit laws, and allowed to remain during good behavior only.

SEC. 9. *Be it further enacted*, That the national secretary shall furnish a certified copy of this to the Secretary of the Interior. And this act shall take effect and be in force from and after its passage.\*

Approved, May 21, 1883.

J. F. McCURTAIN,  
*Principal Chief, Choctaw Nation.*

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\*Section 8 of this legislation was deleted by the Choctaw legislature on October 26, 1883. It provided:

*Be it further enacted*, That all such persons of the African descent who have become citizens of the Choctaw Nation shall be entitled to hold any office of trust or profit in this nation, except the office of Principal Chief and district chiefs.

## APPENDIX C

The relevant portions of the appropriation Acts relating to the \$300,000 fund provided for in the treaty of 1866 are as follows:

Act of July 26, 1866, c. 266, 14 Stat. 255, 259:

*Choctaws and Chickasaws.*—For this amount, or so much thereof as may become due to the Choctaws and Chickasaws under the third and forty-sixth articles of the treaty of April twenty-eighth, eighteen hundred and sixty-six, for interest at the rate of five per centum, upon the amount paid for certain lands ceded by them to the United States, fifteen thousand dollars.

\* \* \* \* \*

For this amount to be advanced the Choctaws for the cession of the leased district, and the admission of the Kansas Indians, as per forty-sixth article treaty of April twenty-eight, eighteen hundred and sixty-six, one hundred and fifty thousand dollars.

For this amount to be advanced the Chickasaws for the cession of the leased district, and the admission of the Kansas Indians, as per forty-sixth article treaty of April twenty-eight, eighteen hundred and sixty-six, fifty thousand dollars.

Act of April 10, 1869, c. 16, 16 Stat. 13, 39:

For this amount, interest due the Choctaws and Chickasaws, August eighth, eighteen hundred and sixty-eight, on three hundred thousand dollars held in trust for

said Indians, under the third article treaty of April twenty-eighth, eighteen hundred and sixty-six, fifteen thousand dollars.

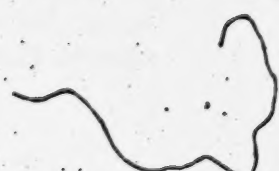
Act of May 17, 1882, c. 163, 22 Stat. 68, 72-73:

That the sum of ten thousand dollars is hereby appropriated, out of the three hundred thousand dollars reserved by the third article of the treaty with the Choctaws and Chicksaws concluded April eighth, eighteen hundred and sixty-six, for the purpose of educating freedmen in said tribes, to be expended under the direction of the Secretary of the Interior, three-fourths thereof for the freedmen among the Choctaws, and one-fourth for the freedmen among the Chickasaws: *Provided*, That said sum of ten thousand dollars shall be deducted in like proportion from any moneys in this act appropriated to be paid said Choctaws and Chickasaws; *and provided further*, That either of said tribes may, before such expenditure, adopt and provide for the freedmen in said tribe in accordance with said third article, and in such case the money herein provided for such education in said tribe shall be paid over to said tribe, to be taken from the unpaid balance of the three hundred thousand dollars due said tribe.

Act of March 3, 1885, c. 341, 23 Stat. 362, 366:

For this amount, due the Choctaw Nation, to be placed to the credit of the Choctaws on the books of the United States Treasury, to draw interest at five per centum per annum from the twenty-first day of May, eighteen hundred and eighty-three, the date of the passage of an act by the Choctaw legislature to adopt the Choctaw freedmen as citizens, being three-fourths of the balance of the sum of three hundred thousand dollars stip-

ulated to be paid and to draw interest under the third and forty-sixth articles of the treaty between the United States and the Choctaws and Chickasaws dated April twenty-eighth, eighteen hundred and sixty-six, less such sums, at the rate of one hundred dollars per capita, as shall be sufficient to pay such persons of African descent belonging to said nation who shall elect to remove and actually remove from the said nation, fifty-two thousand one hundred and twenty-five dollars; in all, eighty-two thousand one hundred and fifty-seven dollars and eighty-nine cents.





## APPENDIX D

The material portions of the Curtis Act of June 28, 1898, c. 517, 30 Stat. 495, are as follows:

SEC. 11. That when the roll of citizenship of any one of said nations or tribes is fully completed as provided by law, and the survey of the lands of said nation or tribe is also completed, the commission heretofore appointed under Acts of Congress, and known as the "Dawes Commission," shall proceed to allot the exclusive use and occupancy of the surface of all the lands of said nation or tribe susceptible of allotment among the citizens thereof, as shown by said roll, giving to each, so far as possible, his fair and equal share thereof, considering the nature and fertility of the soil, location, and value of same; \* \* \*

SEC. 21. \* \* \*

It [the Dawes Commission] shall make a correct roll of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation, and all their descendants born to them since the date of the treaty.

It shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw tribes and their descendants born to them since the date of said treaty and forty acres of land, including their present residences and improvements, shall be allotted to each, to be selected, held,

and used by them until their rights under said treaty shall be determined in such manner as shall be hereafter provided by Congress.

SEC. 29. \* \* \*

That the lands allotted to the Choctaw and Chickasaw freedmen are to be deducted from the portion to be allotted under this agreement to the members of the Choctaw and Chickasaw tribe so as to reduce the allotment to the Choctaws and Chickasaws by the value of the same.

That the said Choctaw and Chickasaw freedmen who may be entitled to allotments of forty acres each shall be entitled each to land equal in value to forty acres of the average land of the two nations.

## APPENDIX E

The material portions of the Supplemental Agreement of March 21, 1902, as approved by the Act of July 1, 1902, c. 1362, 32 Stat. 641, 642, are as follows:

### ALLOTMENT OF LANDS

11. There shall be allotted to each member of the Choctaw and Chickasaw tribes, as soon as practicable after the approval by the Secretary of the Interior of his enrollment as herein provided, land equal in value to three hundred and twenty acres of the average allottable land of the Choctaw and Chickasaw nations, and to each Choctaw and Chickasaw freedman, as soon as practicable after the approval by the Secretary of the Interior of his enrollment, land equal in value to forty acres of the average allottable land of the Choctaw and Chickasaw nations; to conform, as nearly as may be, to the areas and boundaries established by the Government survey, which land may be selected by each allottee so as to include his improvements. \* \* \*

### CHICKASAW FREEDMEN

36. Authority is hereby conferred upon the Court of Claims to determine the existing controversy respecting the relations of the Chickasaw freedmen to the Chickasaw Nation and the rights of such freedmen in the lands of the Choctaw and Chickasaw nations under the third article of the treaty

of eighteen hundred and sixty-six, between the United States and the Choctaw and Chickasaw nations, and under any and all laws subsequently enacted by the Chickasaw legislature or by Congress.

37. To that end the Attorney-General of the United States is hereby directed, on behalf of the United States, to file in said Court of Claims, within sixty days after this agreement becomes effective, a bill of interpleader against the Choctaw and Chickasaw nations and the Chickasaw freedmen, setting forth the existing controversy between the Chickasaw Nation and the Chickasaw freedmen and praying that the defendants thereto be required to interplead and settle their respective rights in such suit.

38. Service of process in the suit may be had on the Choctaw and Chickasaw nations, respectively, by serving upon the principal chief of the former and the governor of the latter a certified copy of the bill, with a notice of the time for answering the same, which shall not be less than thirty nor more than sixty days after such service, and may be had upon the Chickasaw freedmen by serving upon each of three known and recognized Chickasaw freedmen a certified copy of the bill, with a like notice of the time for answering the same, and by publishing a notice of the commencement of the suit, setting forth the nature and prayer of the bill, with the time for answering the same, for a period of three weeks in at least two weekly newspapers having general circulation in the Chickasaw Nation.

39. The Choctaw and Chickasaw nations, respectively, may in the manner prescribed in sections twenty-one hundred and

three to twenty-one hundred and six, both inclusive, of the Revised Statutes, employ counsel to represent them in such suit and protect their interests therein; and the Secretary of the Interior shall employ competent counsel to represent the Chickasaw freedmen in said suit and to protect their interests therein; and the compensation of counsel so employed for the Chickasaw freedmen, including all costs of printing their briefs and other incidental expenses on their part, not exceeding six thousand dollars, shall be paid out of the Treasury of the United States upon certificate of the Secretary of the Interior setting forth the employment and the terms thereof, and stating that the required services have been duly rendered; and any party feeling aggrieved at the decree of the Court of Claims, or any part thereof, may, within sixty days after the rendition thereof, appeal to the Supreme Court, and in each of said courts the suit shall be advanced for hearing and decision at the earliest practicable time.

40. In the meantime the Commission to the Five Civilized Tribes shall make a roll of the Chickasaw freedmen and their descendants, as provided in the Atoka agreement, and shall make allotments to them as provided in this agreement, which said allotments shall be held by the said Chickasaw freedmen, not as temporary allotments, but as final allotments, and in the event that it shall be finally determined in said suit that the Chickasaw freedmen are not, independently of this agreement, entitled to allotments in the Choctaw and Chickasaw lands, the Court of Claims shall render a decree in favor of the Choctaw and Chickasaw nations according to their respective interests,



and against the United States, for the value of the lands so allotted to the Chickasaw freedmen as ascertained by the appraisal thereof made by the Commission to the Five Civilized Tribes for the purpose of allotment, which decree shall take the place of the said lands and shall be in full satisfaction of all claims by the Choctaw and Chickasaw nations against the United States or the said freedmen on account of the taking of the said lands for allotment to said freedmen: *Provided*, That nothing contained in this paragraph shall be construed to affect or change the existing status or rights of the two tribes as between themselves respecting the lands taken for allotment to freedmen, or the money, if any, recovered as compensation therefor, as aforesaid.

#### MISCELLANEOUS

SEC. 68. No act of Congress or treaty provision, nor any provision of the Atoka agreement, inconsistent with this agreement, shall be in force in said Choctaw and Chickasaw nations.

